United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

OCTOBER TERM, 1901.

No. 1138.

115

No. 21, SPECIAL CALENDAR.

CORNELIUS SULLIVAN, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

WRIT OF ERROR TO POLICE COURT OF THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 8, 1901.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 26, 1901.

In the Court of Appeals of the District of Columbia.

CORNELIUS SULLIVAN, Plaintiff in Error,
vs.
THE DISTRICT OF COLUMBIA. } No. 1138.

a In the Police Court of the District of Columbia, June Term, 1901.

DISTRICT OF COLUMBIA
vs.
CORNELIUS SULLIVAN. } No. 208,558. Information for Keeping Bar Open on Sunday.

Be it remembered that in the police court of the District of Columbia, at the city of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA
vs.
CORNELIUS SULLIVAN. } No. 208,558.

Bill of Exceptions.

Be it remembered that on the trial of this cause before the Honorable Ivory G. Kimball, one of the judges of the police court of the District of Columbia, and a jury, begun and had on the 22d day of October, A. D. 1901, the defendant, Cornelius Sullivan, admitted in open court that on Sunday, the 23d day of June, 1901, he was the proprietor of a bar-room situate at No. 613 I street southwest, in the city of Washington, District of Columbia, and had a license therefor under the provisions of an act of Congress entitled "An act regulating the sale of intoxicating liquors in the District of Columbia," approved March 3d, 1893.

And thereupon one W. E. ROLLINS, a member of the Metropolitan police force of the District of Columbia, was produced, sworn, and examined as a witness on behalf of the prosecution, and testified that he went on duty at twelve o'clock on the night of June 22, 1901; that the defendant's bar-room was on his (witness') beat; that in passing around defendant's saloon he heard some loud talking within, and he went around to the front, on I street, and looked through the front window into the bar-room, and also into a private

room which adjoins the bar-room; that the two rooms were separated from each other by a wooden partition about six feet in height, which was about one-half the height of the ceiling; that prior to the erection of the partition the two rooms constituted one room; that entrance from one room to the other was by means of a door in the partition; that the bar-room is about twenty-five feet in length,
2 with a door at the south end opening upon I street and a window at each side of the door; that the bar counter extends from the front of the room to a point near the partition, and is on the side next the public alley; that the alley runs along the east side of the house, and a door opens from the private room adjoining the bar-room into the alley, near which door there is a hole, about twelve inches square, in the partition, through which he had previously seen women put cans for beer; that he had also previously seen men sitting at tables in the said private room drinking; that on the night in question when he looked through the window he saw beyond, through the little hole in the partition, into the private room, and there saw a man's head; that the defendant then came through the door in the partition, into the bar-room and behind the bar counter, where he took from an ice-box two bottles of beer, and also poured out a glass of whiskey, and carried the beer and glass of whiskey into the back room, the door closing behind him; that it was then twenty minutes of one o'clock, on Sunday morning; that officer Auguste was with him, and they then immediately went around to the alley door, where they knocked for admittance; that in half a minute the defendant opened the door, and they found in the back room only the defendant and his bartender and another man and two bottles partly full of beer on the table.

Upon cross-examination the witness Rollins testified that when he entered the room he saw no whiskey or whiskey bottle or glass, and that he made no inquiry concerning them; that he saw no money; that he never saw parties drinking in the back room adjoining the bar-room pay anything; that the defendant and his wife live in the upper part of the house, and that their kitchen adjoins, at the rear, the room next the bar-room; that the two men he found in the room next the bar-room were Mr. Crowley, the defendant's bartender, and Mr. Daniel Keohane, the defendant's cousin, who had been the defendant's bartender until a few days previously and whom Crowley had succeeded in that capacity; that Keohane, while bar-
3 tender, lived in the house with the defendant and had left only the Thursday or Friday previously; that witness looked around and went out into the alley, a few steps from the door, which was closed behind him, and had a consultation with officer Auguste, and then returned and placed the defendant under arrest and took him to the station-house; that the defendant went with him reluctantly.

Counsel for defendant asked the witness, "What was said and done while you were in there the first time?" to which the witness replied, "I asked Mr. Sullivan what he was doing in his bar. I asked him if he didn't know it was twenty minutes to one o'clock.

He said he got beer for his friends. I said it was a violation of the law for you to enter your bar after twelve o'clock. He said he did not think it was a violation to get liquor for a friend. He pleaded ignorance of the law, and tried to show me that he was not selling anything. I then went out and consulted with my partner. I consulted with him because he has been on the force longer than I have and is more experienced in such matters."

And thereupon GEORGE G. AUGUSTE, another member of said Metropolitan police force, being produced, sworn, and examined on behalf of the prosecution, testified to the same effect as the preceding witness, Rollins, and that the door between the bar-room and the room referred to, where the men were seen, was a swing-door like those ordinarily to be found in bar-rooms, and also testified, upon cross-examination, that the ice-box was not right up against the partition.

The prosecution then rested; whereupon the defendant, by his attorney, stated that he did not wish to offer any testimony. No other or further testimony was given at the trial.

And thereupon the attorney for the defendant moved the court to charge the jury that upon the evidence they should return a verdict for the defendant; which said motion the court then and there
4 overruled; to which action of the court in overruling said motion the attorney for the defendant then and there duly excepted, and said exception was at the time duly noted by the judge on his minutes.

And thereupon the attorney for the defendant moved the court to charge the jury that they ought not to find the defendant guilty unless they are satisfied from the evidence that the back room adjoining the bar-room was used as a part of the bar-room for the purpose of making sales therein; which said motion the court then and there overruled; to which action of the court in overruling said motion the attorney for the defendant then and there duly excepted, and the said exception was at the time duly noted by the judge on his minutes.

And thereupon the attorney for the defendant moved the court to charge the jury that if they find from the evidence that the defendant entered his bar-room at the time stated and took therefrom beer and carried it into the other room, not for the purpose of making a sale but for the purpose of entertaining his bartender and his cousin in his private apartment, then their verdict should be not guilty; which said motion the court then and there overruled, and refused to so instruct the jury; to which action of the court in overruling said motion and also in refusing to so instruct the jury the attorney for the defendant then and there duly excepted, and said exception was at the time duly noted by the judge on his minutes.

And thereupon the judge of his own motion charged the jury as follows:

"GENTLEMEN OF THE JURY: This is the first case under the liquor law that you have had, at least at the present term of the court.

Therefore it is necessaary that I should charge you more fully than later on, when you will be more familiar with this class of cases. This defendant, who is said to be a licensed liquor dealer, having obtained a license from the excise board of the District, is charged with keeping his place of
5 business open the 23d day of June, said day being Sunday. He is not charged in the information with selling. Sec. 6 of the liquor laws says that under the license issued under this act, between 12 o'clock midnight and 4 o'clock in the morning and on Sunday, every bar-room or other place where intoxicating liquors are sold shall be kept closed and no intoxicating liquors sold. *There are two parts—one that there shall be no intoxicating liquors sold, and one that the place shall be kept closed.* This defendant is not charged with selling intoxicating liquors, but that his place was not kept closed. The shutting of the front door and the closing of the blinds may be incident to the closing of the place, *but it is not closed if in the meantime persons are within the precincts of the bar-room. The evidence shows that this bar-room has been divided*, what was originally a long room being separated by a partition, in which partition is a little hole, through which beer is passed out to women coming to get beer or liquors of various kinds. *It is claimed by the Government that this back room is used during the week for drinking purposes.* It is claimed by the Government that the door between this back room and the bar is a swinging door; that there were tables in this back room which were used for drinking purposes. It is claimed by the Government that this partition does not go clear to the ceiling; that it is not solid, but open above. *If you believe from the evidence that this room, which is back of the bar, is used for the purpose of carrying on the business in connection with the bar-room, and that it is used for the purpose of serving drinks, it is a violation of the law and is as much a part of the bar-room as is the part in front of the partition. If you believe from the evidence that this defendant came from the bar-room this day, and that it was Sunday, and that he got from that bar-room liquor, carried it out of the bar-room in contemplation of law, I charge you that the bar-room was not closed. It is claimed by the Government*
6 *that in this back room there was a man who was bartender and another man, the guests of Mr. Sullivan. If from the evidence you find this to be so, in contemplation of law the bar-room was not closed.* A bar-room is allowed to be open for legitimate purposes. For the purpose of seeing to the fires, to the windows, or for any legitimate purpose. *It is not to be entered even by the proprietor for the purpose of serving drinks in a back room, because if it is taken from the bar for this purpose, it is not closed in contemplation of the law.* It is for the purpose of avoiding all this that this law is made as stringent as it is. Of course, you have the evidence of the officers and you must find from that whether the facts are as stated. *If you find from the evidence that this thing was done, then in contemplation of the law this bar-room was open and the law violated.*"

And thereupon the attorney for the defendant then and there

duly excepted to said charge, and also separately to each and every part thereof which is italicised by being underscored, upon the ground that the same and every part thereof is contrary to law and to the evidence and is without evidence to support the same; which said exception was at the time duly noted by the judge on his minutes.

And thereupon, then and there, the attorney for the defendant also duly excepted to so much of said charge as states, in effect, that the presence of any person in a bar-room on Sunday for any purpose whatever is unlawful, upon the ground that the same is contrary to law; and also to so much of said charge as states, in effect, that if the jury find from the evidence that Crowley and Keohane were in the back room as guests of the defendant, then, in contemplation of law, the bar-room was not closed, upon the ground that the question whether or not the back room was a part of the bar-room was one of fact for the jury, and also because the evidence was insufficient to establish as a fact that the back room was a part of the bar-room; and also to so much of said charge as stated in effect that the act of the defendant in taking liquor out of the bar-room on Sunday was unlawful, without reference to his intent or purpose in so doing, or to the uses for which he applied or intended to apply such liquor, upon the ground that the same is contrary to law, each of which said exceptions was at the time duly noted by the judge on his minutes.

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And thereupon, after the said several exceptions were so as aforesaid taken and noted by the judge on his minutes, the jury retired to consider of their verdict, and thereafter returned into court and returned a verdict of guilty. Whereupon the defendant, by his attorney, then and there, in open court, gave notice of his intention to apply to the Court of Appeals for a writ of error, notice of which said intention was also given at the time of each of said rulings by the judge and when each of said exceptions was taken and noted, as aforesaid.

And thereupon, on the 22d day of October, 1901, the court rendered judgment upon said verdict and passed sentence upon the defendant.

This bill of exceptions is now duly presented to the court, and the defendant, by his attorney, now here prays the court to sign this his bill of exceptions, which is accordingly done this 24th day of October, A. D. 1901.

I. G. KIMBALL,
Judge Police Court.

[Endorsed:] Filed Oct. 24, 1901. Joseph T. Potts, clerk police court, D. C.

8 In the Police Court of the District of Columbia, June Term, 1901.

DISTRICT OF COLUMBIA *vs.* CORNELIUS SULLIVAN. } No. 208,558. Information for Keeping Bar Open on Sunday.

Defendant arraigned June 29, 1901.
Plea: Not guilty.
Jury trial demanded.
Con. Oct. 17, 22.
Oct. 22.—Verdict: Guilty.
Judgment: Guilty.
Sentence: To pay a fine of one hundred dollars, and in default to be committed to the work-house for the term of sixty days.
Defendant, by his att'y, gives notice of his intention to apply to a justice of the Court of Appeals for a writ of error.
Oct. 22.—Recognizance in the sum of $200 entered into on writ of error to Court of Appeals, D. C., upon the condition that in the event of the denial of the application for a writ of error the defendant will, within five days next after the expiration of ten days, appear in police court and abide by and perform its judgment, and that in the event of the granting of such writ of error the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises.

JAMES RICHARDSON, *Surety.*

Oct. 29.—Writ of error received from Court of Appeals.
Oct. 24.—Bill of exceptions filed, settled, and signed.
Nov. 6.—Record and proceedings sent to Court of Appeals in obedience to writ of error.

NOVEMBER 6TH, 1901.

I hereby certify, under the seal of this court, that the foregoing is a true copy of the record of the proceedings had in the police court in the above-entitled case.

[Seal Police Court of District of Columbia.]

JOSEPH HARPER,
Dep. Clerk Police Court, Dist. of Columbia.

9 Copy.

DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

In the Police Court of the District of Columbia, June Term, A. D. 1901.

James L. Pugh, Jr., Esq., special assistant attorney for the District of Columbia, who for the said District prosecutes in this behalf in his proper person, comes here into court and causes the court to be informed and complains that Cornelius Sullivan, late of the county of

Washington and District of Columbia aforesaid, is the keeper of a licensed bar-room or place where intoxicating liquors are sold under the provisions of an act of Congress entitled "An act regulating the sale of intoxicating liquors in the District of Columbia," approved March 3, 1893, on the twenty-third day of June, in the year one thousand nine hundred and one, on I street *avenue alley* southwest, in the city of Washington, District of Columbia aforesaid.

And the said James L. Pugh, Jr., Esq., special assistant, as aforesaid, comes here into court, as aforesaid, and causes the court to be informed and complains that Cornelius Sullivan, as aforesaid, on said twenty-third day of June, in the year aforesaid, did fail to have his bar-room or place of business for the sale of intoxicating liquors closed on said day, the said day being Sunday—

Contrary to and in violation of an act of Congress entitled "An act regulating the sale of intoxicating liquors in the District of Columbia," approved March 3, 1893, and constituting a law of the District of Columbia.

JAMES L. PUGH, JR.,
Special Assistant Attorney for the District of Columbia.

Personally appeared W. E. Rollins this 24th day of June, A. D. 1901, and made oath before me that the facts set forth in the foregoing information are true.

[Seal Police Court of District of Columbia]

F. A. SEBRING,
Deputy Clerk of the Police Court of the District of Columbia.

[Endorsed :] W. 4. 200 bds. Col., —. No. 208,558. Information. District of Columbia *vs.* Cornelius Sullivan. Open on Sunday. Witnesses: W. E. Rollins, M. P.; G. Auguste, M. P. 100–60. W. H. 10, 17, 22. Filed June 24, 1901. Joseph Y. Potts, clerk police court, D. C.

10 UNITED STATES OF AMERICA, }
District of Columbia, } *ss :*

In the Police Court of the District of Columbia.

I, Joseph Y. Potts, clerk of the police court of the District of Columbia, do hereby certify *that* the foregoing pages, numbered from 1 to 9, inclusive, to be true copies of originals in cause No. 208,558, wherein The District of Columbia is plaintiff and Cornelius Sullivan — defendant, as the same remain upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, — the city of Washington, in said District, this 6th day — November, A. D. 1901.

[Seal Police Court of District of Columbia.]

JOSEPH Y. POTTS,
Clerk Police Court, Dist. of Columbia.

11 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable I. G. Kimball, judge of the police court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court, before you, between The District of Columbia, plaintiff, and Cornelius Sullivan, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Richard H. Alvey, Chief Justice of the said Court of Appeals, the 29th day of October, in the year of our Lord one thousand nine hundred and one.

Seal Court of Appeals, District of Columbia.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by—
M. F. MORRIS,
Associate Justice of the Court of Appeals of the District of Columbia.

[Endorsed:] Filed Oct. 29, 1901. Joseph Y. Potts, clerk police court, D. C.

Endorsed on cover: Police court, District of Columbia. No. 1138. Cornelius Sullivan, plaintiff in error, *vs.* The District of Columbia. Court of Appeals, District of Columbia. Filed Nov. 8, 1901. Robert Willett, clerk.

IN THE

Court of Appeals, District of Columbia.

JANUARY TERM, 1902.

No. 1138.

No. 21, SPECIAL CALENDAR.

CORNELIUS SULLIVAN, PLAINTIFF IN ERROR,

vs.

DISTRICT OF COLUMBIA.

BRIEF FOR DEFENDANT IN ERROR.

ANDREW B. DUVALL,
EDWARD H. THOMAS,
Attorneys for Defendant.

4211 GLOBE PRINTING COMPANY.

IN THE

Court of Appeals of the District of Columbia.

JANUARY TERM, 1902.

No. 1138.

CORNELIUS SULLIVAN, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

BREIF FOR DEFENDANT IN ERROR.

STATEMENT OF CASE.

This is a Writ of Error to reverse a judgment of the Police Court based upon the verdict of a jury. An information was filed in said Court against the plaintiff in error charging him with being "the keeper of a licensed bar-room or place where intoxicating liquors are sold," and that on June 23, 1901, he "did fail to have his bar-room or place of business for the sale of intoxicating liquors closed on said day, the said day being Sunday." There was a plea of not guilty. A jury trial was demanded and the verdict of the jury was guilty; and judgment was entered thereon (Rec. 7). From the Bill of Exceptions, signed by the trial Judge (Rec. 1), it appears that the only testimony introduced was that in behalf of the prosecution, which consisted of the testimony of two members of the Metropolitan Police force and was as follows:

W. E. Rollins testified that he went on duty at twelve o'clock on the night of June 22, 1901; that the defendant's bar-room was on his (witness') beat; that in passing around defendant's saloon he heard some loud talking within, and he went around to the front, on I street, and looked through the front window into the bar-room, and also into a private room which adjoins the bar-room; that the two rooms were separated from each other by a wooden partition about six feet in height, which was about one-half the height of the ceiling; that prior to the erection of the partition the two rooms constituted one room; that entrance from one room to the other was by means of a door in the partition; that the bar-room is about twenty-five feet in length, with a door at the south end opening upon I street and a window at each side of the door; that the bar counter extends from the front of the room to a point near the partition, and is on the side next the public alley; that the alley runs along the east side of the house, and a door opens from the private room adjoining the bar-room into the alley, near which door there is a hole, about twelve inches square, in the partition, through which he had previously seen women put cans for beer; that he had also previously seen men sitting at tables in the said private room drinking; that on the night in question when he looked through the window he saw beyond, through the little hole in the partition, into the private room, and there saw a man's head; that the defendant then came through the door in the partition, into the bar-room and behind the bar counter, where he took from an ice-box two bottles of beer, and also poured out a glass of whiskey, and carried the beer and glass of whiskey into the back room, the door closing behind him; that it was then twenty minutes of one o'clock, on Sunday morning; that officer Auguste was

with him, and they then immediately went around to the alley door, where they knocked for admittance; that in half a minute the defendant opened the door, and they found in the back room only the defendant and his bartender and another man and two bottles partly full of beer on the table.

Upon cross-examination the witness Rollins testified that when he entered the room he saw no whiskey or whiskey bottle or glass, and that he made no inquiry concerning them; that he saw no money, that he never saw parties drinking in the back room adjoining the bar-room pay anything; that the defendant and his wife live in the upper part of the house, and that their kitchen adjoins, at the rear, the room next the bar-room; that the two men he found in the room next the bar-room were Mr. Crowley, the defendant's bartender, and Mr. Daniel Keohane, the defendant's cousin, who had been the defendant's bartender until a few days previously and whom Crowley had succeeded in that capacity; that Keohane, while bartender, lived in the house with the defendant and had left only the Thursday or Friday previously; that witness looked around and went out into the alley, a few steps from the door, which was closed behind him, and had a consultation with officer Auguste, and then returned and placed the defendant under arrest and took him to the station-house; that the defendant went with him reluctantly.

Counsel for defendant asked the witness, "What was said and done while you were in there the first time?" to which the witness replied, "I asked Mr. Sullivan what he was doing in his bar. I asked him if he didn't know it was twenty minutes to one o'clock. He said he got beer for his friends. I said it was a violation of the law for you to enter your bar after twelve o'clock. He said he did not think it was a violation to get liquor

for a friend. He pleaded ignorance of the law, and tried to show me that he was not selling anything. I then went out and consulted with my partner. I consulted with him because he has been on the force longer than I have and is more experienced in such matters."

The other witness, George G. Auguste, testified to the same effect as the preceding witness, Rollins, and that the door between the bar-room and the room referred to, where the men were seen, was a swing-door like those ordinarily to be found in bar-rooms, and also testified, upon cross-examination, that the ice-box was not right up against the partition.

ARGUMENT.

The errors assigned on appeal relate to the sufficiency of the information and the correctness of the charge of the trial Judge.

The information is claimed to be insufficient because it contained no averment that the defendant was not the keeper of an established hotel, and because it is not averred that the acts complained of were not within the exception as to hotel-keepers contained in the statute.

These objections have been expressly overruled, and a similar information sustained by this Honorable Court in the case of Lehman v. D. C., decided January 7, 1902.

It is respectfully submitted that the testimony in the Lehman case, upon which a conviction was affirmed, did not present as strong a case of guilt as the testimony in this case, and the application of the law, as declared in that case, requires an affirmance of the judgment of the Police Court in the present case.

ANDREW B. DUVALL,
EDWARD H. THOMAS,
Attorneys for Defendant in Error.